

ESTTA Tracking number: **ESTTA447733**

Filing date: **12/21/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Farnam Companies, Inc.
Granted to Date of previous extension	12/24/2011
Address	301 West Osborn Road PHOENIX, AZ 85013 UNITED STATES
Attorney information	Ray K. Harris Fennemore Craig, P.C. 3003 N. Central Avenue Suite 2600 PHOENIX, AZ 85012 UNITED STATES ip@fclaw.com, rharris@fclaw.com, jcranston@fclaw.com Phone:602-916-5414

Applicant Information

Application No	85343088	Publication date	10/25/2011
Opposition Filing Date	12/21/2011	Opposition Period Ends	12/24/2011
Applicant	Teva Animal Health, Inc. 3915 South 48th Street Terrace St. Joseph, MO 64503 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: PARASITICIDAL PREPARATION FOR USE ON ANIMALS


Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	2730810	Application Date	02/12/2002
Registration Date	06/24/2003	Foreign Priority Date	NONE
Word Mark	IVERCARE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2002/04/01 First Use In Commerce: 2002/04/01 Antiparasitic preparation for animals; namely, horses

U.S. Registration No.	2942987	Application Date	04/21/2003
Registration Date	04/19/2005	Foreign Priority Date	NONE
Word Mark	LIQUICARE P		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2004/01/05 First Use In Commerce: 2004/01/05 Medicated preparation, namely, liquid pyrantel pamoate for use in the control of parasites in companion animals such as dogs, cats, and horses		

U.S. Registration No.	3050827	Application Date	02/04/2005
Registration Date	01/24/2006	Foreign Priority Date	NONE
Word Mark	COMBOCARE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2004/01/05 First Use In Commerce: 2004/01/05 Antiparasitic preparation for animals; namely, horses		

U.S. Registration No.	3080698	Application Date	07/13/2004
Registration Date	04/11/2006	Foreign Priority Date	NONE
Word Mark	PELLET-CARE P		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/09/01 First Use In Commerce: 2004/09/01 ANTIPARASITIC PREPARATION FOR ANIMALS; NAMELY, HORSES

U.S. Registration No.	3170002	Application Date	05/09/2005
Registration Date	11/07/2006	Foreign Priority Date	NONE
Word Mark	TAPECARE PLUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/01/01 First Use In Commerce: 2006/01/01 Antiparasitic preparation for animals, namely horses		

Attachments	78239949#TMSN.jpeg (1 page)(bytes) 78561037#TMSN.jpeg (1 page)(bytes) 78449809#TMSN.jpeg (1 page)(bytes) 78625594#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (16 pages)(391547 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ray K. Harris/
Name	Ray K. Harris

Date	12/21/2011
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 85/343,088

Mark: DUAL-CARE

Publication Date: October 25, 2011

FARNAM COMPANIES, INC.)
)
Opposer,)
)
v.)
)
TEVA ANIMAL HEALTH, INC.)
)
Applicant.)
)

NOTICE OF OPPOSITION

Opposer, Farnam Companies, Inc., an Arizona corporation, whose business address is 301 West Osborn Road, Phoenix, Arizona 85013, believes it will be damaged by registration of the mark shown in U.S. Trademark Application Serial No. 85/343,088, and hereby opposes the registration under 15 U.S.C. § 1063 on the following grounds:

1. This Notice of Opposition is timely filed as the mark DUAL-CARE was published on October 25, 2011, and Opposer's Request to Extend Time was granted until December 24, 2011.

2. As published in the *Official Gazette of Trademarks*, on October 25, 2011, the mark sought to be registered is DUAL-CARE for:

--Parasiticial preparation for use on animals, in International Class 5.--

3. Applicant Teva Animal Health, Inc. filed the application based on intent to use the mark in commerce, pursuant to Section 1(b) of the Trademark Act (15 U.S.C. § 1051(b)). No Amendment to Allege Use has been filed.

4. Applicant, Teva Animal Health, Inc., is a Delaware corporation, with a principal place of business at 3915 South 48th Street Terrace, St. Joseph, Missouri 64503 (hereinafter “Applicant”).

5. Applicant is seeking to obtain registration on the Principal Register, under the provisions of the Trademark Act of 1946, as amended, of the mark DUAL-CARE for the goods identified above, in International Class 5, filed June 10, 2011.

6. Opposer is the owner of the following family of registered federal applications, copies of which are attached as Exhibits A-E:

Mark	Registration No.	Class/Goods
IVERCARE	2,730,810	Antiparasitic preparation for animals, namely horses
LIQUICARE P	2,942,987	Medicated preparation, namely, liquid pyrantel pamoate for use in the control of parasites in companion animals such as dogs, cats, and horses
COMBOCARE	3,050,827	Antiparasitic preparation for animals, namely horses
PELLET-CARE P	3,080,698	Antiparasitic preparation for animals, namely horses
TAPECARE PLUS	3,170,002	Antiparasitic preparation for animals, namely horses

7. Opposer has continuously used the trademark IVERCARE since at least as early as April 2002. This date predates Applicant’s filing date of June 10, 2011.

8. Opposer has continuously used the trademark LIQUICARE P since at least as early as January 2004. This date predates Applicant’s filing date of June 10, 2011.

9. Opposer has continuously used the trademark COMBOCARE since at least as early as January 2004. This date predates Applicant’s filing date of June 10, 2011.

10. Opposer has continuously used the trademark PELLET-CARE P since at least as early as September 2004. This date predates Applicant’s filing date of June 10, 2011.

11. Opposer has used the trademark TAPECARE PLUS continuously since at least as early as January 2006, except to the extent use was disrupted by circumstances outside Opposer's control. Any discontinued use was without intent to abandon and with intent to resume use of the mark. Applicant's filing date (June 10, 2011) is after Opposer's priority date.

12. There is no issue of priority concerning U.S. Trademark Application Serial No. 85/343,088 since Opposer's first use dates of its IVERCARE, LIQUICARE P, COMBOCARE, PELLET-CARE P, and TAPECARE PLUS marks are prior to Applicant's filing date, and Applicant asserts no date of first use of its mark.

13. In addition to continually using the family of marks, Opposer has extensively advertised its marks. Opposer has invested considerable effort and expense in promoting the family of marks, and the goods sold under the marks. Opposer has established valuable goodwill and reputation in its family of marks.

14. Registration of the mark shown in U.S. Trademark Application Serial No. 85/343,088 will result in damage to Opposer under the provisions of Section 2(d) of the U.S. Trademark Act (15 U.S.C. § 1052(d)), pursuant to the allegations stated above.

15. Applicant's DUAL-CARE mark would be used in connection with goods which are similar to the goods of Opposer. The Applicant's "parasiticide preparation for use on animals" uses a combination of 2 or more active ingredients in liquid or pellet form to control tapeworm and other parasites in animals. Opposer uses the same active ingredients to control the same parasites using the same form of application for the same animals. Indeed Applicant has previously supplied goods sold under Opposer's family of marks.

16. Applicant's DUAL-CARE mark would be sold within the same channels of trade as Opposer's goods.

17. DUAL-CARE is confusingly similar to Opposer's previously registered trademarks, IVERCARE, LIQUICARE P, COMBOCARE, PELLET-CARE P, and TAPECARE PLUS (emphasis added), for which Opposer has priority of use.

18. Applicant's continuing use of the mark DUAL-CARE is likely to cause confusion, mistake or deception as to the affiliation, connection or association of Applicant with Opposer.

19. Applicant's continuing use of the mark DUAL-CARE is likely to cause confusion, mistake or deception as to the origin or Applicant's goods or sponsorship or approval of Applicant's goods by Opposer.

20. The registration and continued use of the mark DUAL-CARE by Applicant would cause irreparable harm to Opposer by creating confusion among the consuming public, diminishing the distinctiveness of Opposer's registered family of marks and misappropriating the associated goodwill.

21. Applicant's use of the mark DUAL-CARE would substantially diminish the goodwill of Opposer's preexisting family of marks.

WHEREFORE, Opposer requests that the Applicant be refused registration.


Please direct all correspondence regarding this opposition to **Ray K. Harris** at Fennemore Craig, P.C. at the following address:

Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012

Please direct all telephone calls to Ray K. Harris at (602) 916-5414.

Respectfully submitted this 21st day of December, 2011.

By



Ray K. Harris
FENNEMORE CRAIG
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
(602) 916-5000
Attorneys for Farnam Companies, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing NOTICE OF OPPOSITION was served today by mailing, via first-class mail, postage prepaid, to:

HERSCHEL PEREL
TEVA PHARMACEUTICALS USA, TRADEMARKS DEPARTMENT
425 PRIVET ROAD
HORSHAM, PA 19044

I further certify that the foregoing NOTICE OF OPPOSITION was electronically filed today with the Trademark Trial and Appeal Board.

This 21st day of December 2011.


Melody Tolliver

Exhibit A

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,730,810

United States Patent and Trademark Office

Registered June 24, 2003

**TRADEMARK
PRINCIPAL REGISTER**

IVERCARE

FARNAM COMPANIES, INC. (ARIZONA CORPORATION)
301 WEST OSBORN ROAD
PHOENIX, AZ 85013

FIRST USE 4-1-2002; IN COMMERCE 4-1-2002.

SN 78-108,209, FILED 2-12-2002.

FOR: ANTIPARASITIC PREPARATION FOR ANIMALS; NAMELY, HORSES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

ANDREA K. NADELMAN, EXAMINING ATTORNEY

Exhibit B

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,942,987

United States Patent and Trademark Office

Registered Apr. 19, 2005

**TRADEMARK
PRINCIPAL REGISTER**

LIQUI-CARE P

FARNAM COMPANIES, INC. (ARIZONA CORPORATION)
301 WEST OSBORN ROAD
PHOENIX, AZ 85013

FOR: MEDICATED PREPARATION, NAMELY, LIQUID PYRANTEL PAMOATE FOR USE IN THE CONTROL OF PARASITES IN COMPANION ANIMALS SUCH AS DOGS, CATS, AND HORSES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 1-5-2004; IN COMMERCE 1-5-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-239,949, FILED 4-21-2003.

WON TEAK OH, EXAMINING ATTORNEY

Exhibit C

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 3,050,827

United States Patent and Trademark Office

Registered Jan. 24, 2006

**TRADEMARK
PRINCIPAL REGISTER**

Combocare

FARNAM COMPANIES, INC. (ARIZONA CORPORATION)
301 WEST OSBORN ROAD
PHOENIX, AZ 85013

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: ANTIPARASITIC PREPARATION FOR ANIMALS; NAMELY, HORSES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SER. NO. 78-561,037, FILED 2-4-2005.

FIRST USE 1-5-2004; IN COMMERCE 1-5-2004.

DAVID ELTON, EXAMINING ATTORNEY

Exhibit D

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 3,080,698

United States Patent and Trademark Office

Registered Apr. 11, 2006

**TRADEMARK
PRINCIPAL REGISTER**

PELLET-CARE P

FARNAM COMPANIES, INC. (ARIZONA CORPORATION)
301 WEST OSBORN RD
PHOENIX, AZ 85013

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: ANTIPARASITIC PREPARATION FOR ANIMALS; NAMELY, HORSES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SN 78-449,809, FILED 7-13-2004.

FIRST USE 9-1-2004; IN COMMERCE 9-1-2004.

MIDGE BUTLER, EXAMINING ATTORNEY

Exhibit E

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 3,170,002

United States Patent and Trademark Office

Registered Nov. 7, 2006

**TRADEMARK
PRINCIPAL REGISTER**

TapeCare Plus

FARNAM COMPANIES, INC. (ARIZONA CORPORATION)
301 WEST OSBORN ROAD
PHOENIX, AZ 85013

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: ANTIPARASITIC PREPARATION FOR ANIMALS, NAMELY HORSES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SN 78-625,594, FILED 5-9-2005.

FIRST USE 1-1-2006; IN COMMERCE 1-1-2006.

THEODORE MCBRIDE, EXAMINING ATTORNEY